

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

AGENDA OF FEBRUARY 28, 2018

REGULAR MEETING

TO: Shiva Frentzen, Chair, and
Members of the El Dorado County Local Agency Formation
Commission

FROM: José C. Henríquez, Executive Officer

AGENDA ITEM #8: Welsh Out-of-Agency Agreement with EID

LAFCO Project No. 2018-01

PROPONENTS: Kenneth Welsh, El Dorado Irrigation District

DESCRIPTION OF PROJECT

Staff recommends that the Commission approve the El Dorado Irrigation District's (EID) Out-of-Agency Service Agreement with Mr. Kenneth Welsh in order to extend water and wastewater service to his parcel. The extension of service can be authorized under Government Code Section 56133(c), in response to "an existing or pending threat to the health or safety of the public or residents of the affected territory."

LOCATION

The Welsh parcel is located in the Bass Lake Hills, north of Highway 50, east of Bass Lake Road and between the communities of El Dorado Hills and Cameron Park Road (please refer to Attachment A).

REASON FOR RECOMMENDED ACTION

The well at Mr. Welsh's property has a measured rate of production of less than a gallon per minute according to a 35-minute test performed on August 2017 by a licensed well contractor (Attachment B). This rate is below the minimum well production rate that El Dorado County deems adequate for a new building permit (Attachment C). On February 13, 2018, Mr. Kenneth Welsh, property owner of parcel 119-090-59, entered into an out of agency service agreement (OASA) with EID for the provision of water outside of EID service boundaries. The request was made under the provisions of 56133(c), which allows for a district to extend services outside of its boundaries in response to an existing or pending threat to health and safety. LAFCO discretionary approval is necessary for the OASA to take effect.

BACKGROUND

In late 2017, Mr. Welsh contacted LAFCO about his failing well and what he needs to do to receive water service from EID (Attachment B). Mr. Welsh is the owner of a certain 10-acre property in the Bass Lake Hills area between El Dorado Hills and Cameron Park, identified by APN 119-090-59. Two of his three wells are already dry and the production rate of the remaining well on Mr. Welsh's property has been declining in recent years. At a rate of less than a gallon per minute, the well is below the minimum 5-gallon per minute rate that is required for a new building permit in the county.

In addition to LAFCO staff, Mr. Welsh has also been working with Dr. Dale Coco, EID Director and a former member of LAFCO, and key EID staff on this agreement.

Pertinent Statutes

Among other things, Government Code §56133 prohibits local agencies from extending services outside of their boundaries. However, GC§56133(a) also states that "A city or district may provide new or extended services by contract or agreement outside of its jurisdictional boundaries only if it first requests and receives written approval" from LAFCO. Further, GC§56133(c) provides that, "...the commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries and outside its sphere of influence to respond to an existing or pending threat to the health or safety of the public or residents of the affected territory..." provided certain requirements are met (Attachment C). In LAFCO staff's estimation, all requirements under 56133(c) are met.

Land Use Issues

One of the biggest reasons why this agreement took so long to reach is because Mr. Welsh's property sits in the Bass Lake Hills Specific Plan Area (BLHSPA), a development blueprint adopted by the County of El Dorado circa 1989. The BLHSPA envisions much more intense land use development for the Bass Lake Hills area, comparable to the land use patterns seen in El Dorado Hills and Cameron Park. Indeed, Mr. Welsh's property is in a sub-area zoned medium density residential (1.75 dwellings per acre) under the BLHSPA. His 10-acre parcel could conceivably be developed to include a maximum of seventeen (17) more homes under the BLHSPA. While, currently, the BLHSPA shows the Welsh Property to be subdivided into eleven (11) parcels and would have homes in nine (9) of them, including Mr. Welsh's home, this was just a conjectural scenario when the BLHSPA was adopted. It is conceivable that this plan could be subject to change should Mr. Welsh sell his property to a developer and the latter submits a finalized plan to the County Planning Department.

In the past, developers have sought EID services under the auspices of a low impact development. These people apply to LAFCO with a proposal containing a low number of homes and, once services are extended to their property, increase the land use intensity by multiple-fold. While sympathetic to Mr. Welsh's situation, LAFCO staff had to be reassured this was not a back-door attempt at skirting LAFCO law. Similarly, EID staff wanted assurances that it was not committing itself into providing a lot more services in the future beyond the current request.

Mr. Welsh has consistently indicated he is not interested in developing his property further than it is now. As a show of good faith effort, Mr. Welsh has pursued dedicating

the remainder of his property as permanent open space, either by selling the developmental rights to a private non-profit or by having his property removed from the BLHSPA.

Out-of-Agency Service Agreement

The ultimate satisfactory solution was to include the following restrictions, among others, in the OASA:

- Water provided by EID is limited by a single ¾" meter and by the amount that is sufficient to serve one home; and
- The OASA will be terminated if Mr. Welsh or subsequent landowner further subdivides the parcel in question

Because the OASA is a contract between EID and Mr. Welsh, LAFCO staff is confident both parties will adhere to these stipulations. Enforcement of these provisions is up to EID. As noted earlier, while LAFCO is not a party to this agreement, LAFCO approval is required per Government Code §56133.

Other terms of the OASA (Attachment D) stipulate that EID will provide water service to the Welsh Property at 1½ times District rates in perpetuity and only to the extent that EID determines this "service is necessary to ensure public health and safety and an adequate water supply" to the Welsh property. Mr. Welsh is also responsible for paying for the infrastructure that will be needed to extend service to his home. Lastly, Mr. Welsh also indemnifies EID for any actions it takes to provide service to the site.

Other Actions Taken By EID

EID approved entering into this agreement with Mr. Welsh on January 8, 2018. At the same meeting, EID also amended its local policies on OASAs to take into account instances of existing or pending threats to public health and safety.

As lead agency, EID determined that the actions needed by this agreement are ministerial actions consistent with its local policies and not subject to the provisions of the California Environmental Quality Act (Attachment G).

As a responsible agency, LAFCO staff reviewed the submitted materials and, upon further analysis, determined that this agreement is a project under CEQA. As a result, staff recommends that the Commission assume the role of lead agency and determine that this OASA qualifies for a categorical exemption as outlined in Public Resources Code §§21083 and 21084 (CEQA Guidelines 15319). A Class 19 categorical exemption consists of only the following types of annexations:

- (a) Annexations to a city or special district of areas containing existing public or private structures developed to the density allowed by the current zoning or pre-zoning of either the gaining or losing governmental agency whichever is more restrictive, provided, however, that the extension of utility services to the existing facilities would have a capacity to serve only the existing facilities.
- (b) Annexations of individual small parcels of the minimum size for facilities exempted by Section 15303, New Construction or Conversion of Small Structures.

The exemption under subsection (a) is not allowed if it is foreseeable that services would extend into the annexed parcel and have the potential to serve a greater capacity than existing uses. In LAFCO staff's estimation, as detailed in the immediately preceding section of this report, sufficient safeguards have been put in place as part of the agreement to ensure that an expansion of services beyond Mr. Welsh's current home does not happen. The agreement automatically terminates should Mr. Welsh's parcel be further subdivided. A copy of the exemption is included as Attachment H.

Fees

By law, out-of-agency service agreements are filed by the annexing district. This technically makes the district the applicant responsible for paying LAFCO fees. EID has made an arrangement with Mr. Welsh so that he is responsible for all LAFCO costs. A check from Mr. Welsh was submitted along with the OASA to cover the LAFCO deposit.

ATTACHMENTS

- Attachment A: Project Map
- Attachment B: Welsh Well Report
- Attachment C: Environmental Policy 800-02
- Attachment D: Note from Mr. Welsh Regarding Need for Service
- Attachment E: Government Code §56133
- Attachment F: Welsh Out-of-Agency Service Agreement
- Attachment G: EID Environmental Determination
- Attachment H: Categorical Exemption #19 for the Welsh Out of Agency Service Agreement